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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,521	08/25/2003	Gerald Richter	10541-1832	2280

29074 7590 01/17/2007  
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EXAMINER
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CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/647,521	Applicant(s) RICHTER ET AL.	
	Examiner Ljiljana (Lil) V. Ciric <i>AK</i>	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2006 and 16 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 18, 2006 has been entered as a result of the request for continued examination filed on October 16, 2006.

2. Claims 1 through 17 remain in the application. Of these, claims 1 through 8, 11, and 12 have all been amended, either directly or indirectly. The remaining claims (i.e., claims 9, 10, and 13 through 17) remain withdrawn with traverse.

### ***Response to Arguments***

3. Applicant's arguments filed on September 18, 2006 have been fully considered but they are not persuasive.

Applicant argues that, unlike the separation wall of the instant claimed invention as recited in the amended claims, the separation wall of Fehr (air deflector 14) extends away from, and not towards, the output opening (i.e., towards air discharges 2, 4), and that therefor Fehr fails to disclose all of the elements in amended claim.1. In response to the above argument, the examiner hereby traverses the same by reiterating that Fehr *does* show the separation wall or air deflector 14 as extending along the length of the heater core 11 towards or in the general direction of the output opening or air discharge 2 or 4. Note that a planar structure which extends in a given direction also extends in the opposite direction, so the argument that Fehr shows a separation wall extending away from the output opening but not towards the same is not persuasive and can instead be construed as an admission.

Furthermore, with regard to applicant's arguments relating to the supposed non-applicability of the Fehr reference against claim 8 as amended, it is hereby noted by the examiner that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. See *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). And, "expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." See *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

Additionally, applicant is reminded that pending claims must be broadly, rather than narrowly, interpreted.

Applicant's arguments thus fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments thus also do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

#### ***Election/Restrictions***

4. This application contains claims 9, 10, and 13 through 17 drawn to an invention nonelected with traverse in the reply filed on October 6, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

#### ***Specification***

5. Receipt and entry of the amended abstract filed on September 18, 2006 is hereby acknowledged.

#### ***Claim Rejections - 35 USC § 102***

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 through 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fehr (previously of record).

Fehr discloses a vehicle temperature system essentially as claimed, including, for example: a housing 25 having an intake opening duct (not shown; see column 6, lines 4-8) and an output opening readable on discharge opening 2 and/or 4 and/or 6; an evaporator core 1; a heater core 11 disposed in the housing 25 downstream from the evaporator core 1; a separation wall or fixed air deflector 14 having a first end and a second end, the first end being attached to a first portion of the heater core 11 as shown in Figure 1 and extending along the length of the heater core 11 in the space between the evaporator core 1 and the heater core 11 as also shown in Figure 1; a blower 20 disposed in the housing 25 upstream from the evaporator core 1; and, a drain area and corresponding drain hole 15 formed through the housing 25 adjacent to the evaporator core 1 as shown in Figure 1. The evaporator core 1 and the heater core 11 are also disclosed as being in a side by side spatial relationship as recited in claim 3 of the instant application. The separation wall 14 also isolates a cold air portion and a hot air portion of the space between the evaporator core 1 and the heater core 11, with the cold air portion 21 being adjacent to the evaporator core 1 and the hot air portion being adjacent to the heater core 11. The separation wall or air deflector 14 extends along the length of the heater core 11 towards the output in the space between the evaporator core 1 and the heater core 11, the output in that space being readable on the cold air output to the bypass passage 12 formed at the junction of air flap 13 and the separation wall or fixed air deflector 14 as shown in Figure 1. The separation wall or fixed air deflector 14 defines a mixing channel or area (in conjunction

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with the temperature mixing air flaps 13 and 17 and the housing) for mixing, for example, cold air generated by the evaporator core 1 and hot ambient air drawn into the housing via fan or blower 20.

The reference thus reads on the claims.

*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner works a flexible schedule, but can normally be reached weekdays between 10:30 a.m. and 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ljiljana (Lil) V. Ciric  
Primary Examiner  
Art Unit 3744